

THE HONORABLE BENJAMIN H. SETTLE

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT TACOMA

HP TUNERS, LLC, a Nevada limited
liability company,

Plaintiff,

v.

KEVIN SYKES-BONNETT, SYKED ECU
TUNING INCORPORATED, a Washington
corporation, and JOHN MARTINSON

Defendants.

Cause No. 3:17-cv-05760 BHS

**DEFENDANTS' RESPONSE TO
PLAINTIFF'S MOTION FOR
PROTECTIVE ORDER**

Noted for Consideration:
April 11, 2019

Defendants Kevin Sykes-Bonnett and Syked ECU Tuning, Inc. (collectively "Syked Tuning") hereby respond to Plaintiff, HP Tuners, LLC ("HP Tuners") Motion for Protective Order (Docket No. 164) as follows:

1. Plaintiffs' "bull in a china shop" approach to discovery and its disregard for the rules of this Court are exemplified by the fact that HP Tuners submitted in excess of eleven pages of argument and declaration testimony despite the Court's express request that the submission be confined to five pages or less. To date, HP Tuners has conducted well in excess of one-half dozen third-party depositions without *ever once* having contacted opposing counsel in advance to agree on mutually acceptable dates. Defendants have simply followed the pattern of conduct established by HP Tuners, itself.

2. More substantively, HP Tuners does not have legal standing to object to the subject subpoena. HP Tuners is not the party to whom the subpoena is directed, nor is it the party on whom the subpoena was served. Mr. Kenneth Cannata, the third-party on whom the subpoena was served and who is called upon to testify, has not objected to the deposition and, to the best of Defendants' knowledge, is willing and able to testify on April 19 in Las Vegas

1 when it is convenient for him and for Defendants' counsel. Again, HP Tuners does not (and
2 cannot) cite any authority in support of its apparent belief that it can raise objections on Mr.
3 Cannata's behalf, particularly when Mr. Cannata *himself* chooses *not* to make those
4 objections.

5 3. There is no prejudice to HP Tuners. What "preparation" is needed to attend a
6 third-party deposition? Mr. Cannata is not a party to this action. HP Tuners' counsel cannot
7 choose whether to produce him for examination. HP Tuners' counsel cannot choose what
8 documents Mr. Cannata will or will not produce pursuant to the subpoena. HP Tuners cannot
9 instruct Mr. Cannata not to answer questions or enter objections on Mr. Cannata's behalf.
10 Again, Mr. Cannata is a third-party who (with or without the advice of counsel) has the sole
11 power to decide whether to abide by or oppose the subpoena, and who (again with the advice
12 of *his own* counsel, not HP Tuners' counsel) has the sole power to decide whether to answer
13 or object to questions.

14 4. Furthermore, nothing restricts HP Tuners' ability to take its own third-party
15 deposition of Mr. Cannata at a later date should it so choose. Again, it is not up to HP Tuners
16 or its counsel to order Mr. Cannata or Defendants' undersigned counsel about in these matters.
17 HP Tuners has not cited, and for obvious reasons cannot cite, any authority whatsoever that
18 this Court even has the power to order that willing adult citizens of this country (such as
19 undersigned counsel and Mr. Cannata) may not meet when and where they choose, discuss
20 whatever they choose, and to have a court reporter make a record of their discussion if they so
21 choose. Fundamental rights to travel and speak cannot be restricted simply because it is
22 inconvenient for HP Tuners' principal counsel, Mr. Bleiman, to be in Las Vegas on April 19.

23 4. Nor is it necessary that Mr. Bleiman himself be physically present for the
24 deposition. Based on billing records already filed in this action (Docket No. 159-1), at least
25 two lawyers from Mr. Bleiman's Illinois office have worked on this case, and it is a matter of
26 public record that at least one Washington lawyer serves as local counsel in this action.
27 Similarly, at least two Nevada lawyers have assisted Mr. Bleiman in a parallel action HP
28 Tuners is maintaining against Mr. Cannata in Nevada. How or why one of these other
lawyers cannot attend the deposition (whether in person or by telephone) has not been

1 explained. Should HP Tuners and its counsel wish to know what answers Mr. Cannata
2 provided, they can simply order a transcript and read it. Should they decide they need to
3 question Mr. Cannata themselves, they are free to serve their own third-party deposition
4 subpoena and conduct their own deposition. HP Tuners' dramatic claim that it will somehow
5 be prejudiced if a willing lawyer and a willing witness sit down to ask and answer questions,
6 is simply make believe.

7 For all the foregoing reasons, Plaintiffs' motion is without legal merit and must be
8 denied.

9 Dated April 10, 2019.

Respectfully submitted,

10 /s/ Philip P. Mann

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CERTIFICATE OF SERVICE

I hereby certify on the date indicated below, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to all parties who have appeared in this matter.

DATED: April 10, 2019

/s/ Philip P. Mann